Liew Yok Yin v AGS Harta Sdn Bhd

HIGH COURT (JOHOR BAHRU) — CIVIL NO 22–436 OF 2002
SYED AHMAD HELMY J
25 JULY 2006

Land Law — Indefeasibility of title and interests — Forged transfer — Whether purchaser was bona fide — Whether registration was void

Land Law — Indefeasibility of title and interests — Insufficient instrument — Sale documentation was forged — Whether purchaser was bona fide — Whether registration was void

The plaintiff was the original registered owner of a piece of land ('the land'). Subsequently the land was registered in the name of the defendant. The plaintiff claimed for a declaration that the plaintiff was still the owner of the land and that the defendant's registration was void on the ground that the registration of the title into the defendant's name was obtained by forgery and/or means of an insufficient and/or void instrument as the plaintiff had never at any time executed any instrument of transfer in the defendant's favour, that the original issue document of title had all along been in her possession and that she never parted with it. The defendant in their amended defence denied the existence of forgery on the instrument of transfer and pleaded that even if forgery existed they were bona fide purchaser for value having paid the full purchase price of RM500,000 and the relevant stamp duties and registration fees and by reason thereof had acquired an indefeasible title under s 340 of the National Land Code 1965.

Held, allowing the plaintiff's claim:

(1) The sale documentation comprising of the sale and purchase agreement, the transfer forms and the valuation forms did not bear the signature of the plaintiff and hence the signature appearing thereon not being the signature of the plaintiff could not be a sufficient instrument to convey title to the defendant. Hence since the sale documentation did not bear her signature, it could not bind her (see para 16); *State Tailor Sdn Bhd v Nallapan* [2005] 2 CLJ 167 was followed.

(2) The defendant had on a balance of probabilities failed to discharge the burden that they were purchasers in good faith. The evidence adduced established that the circumstances in concluding the sale without any proper investigation into the title or the person claiming to be owners of the property and the

unexplained completion effected five months after the completion date in contravention of the express terms of time being the essence clearly negatived the bona fides of the defendant (see para 18). There was also no evidence from defendant and/or defendant's lawyer who represented the defendant that he ensured that an amount to cover the real property gains tax payable was retained by the vendor"s solicitors bearing in mind that the vendor's solicitor was contractually obligated to retain such part of the balance of the purchase price for such purpose (see para 23). In the absence of any supporting evidence the court could not conclude that the defendant was a bona fide purchaser even though valuable consideration had been given (see para 24); *Adoma Properties Sdn Bhd v Boonsom Boonyanit* [2001] 2 CLJ 133 distinguished.

[Bahasa Malaysia summary

Plaintif adalah pemilik asal berdaftar sebidang tanah ('tanah tersebut'). Kemudian dari itu, tanah tersebut didaftarkan di atas nama defendan. Plaintif menuntut satu perisytiharan bahawa plaintif masih lagi pemilik tanah tersebut dan pendaftaran defendan tak sah atas alasan bahawa pendaftaran hakmilik kepada nama defendan dibuat dengan pemalsuan dan/atau melalui suratcara yang tak memuaskan dan/atau terbatal kerana plaintif tidak pernah pada mana-mana masapun memeterai sebarang suratcara pindahmilik yang memihakkan kepada defendan dan bahawa dokumen hakmilik keluaran pada sepanjang masa berada di dalam milikannya dan beliau tidak pernah berpisah dengan dokumen hakmilik keluaran tersebut. Defendan di dalam pembelaan terpindanya telah menafikan kewujudan pemalsuan terhadap suratcara pindahmilik dan mengatakan jikapun pemalsuan wujud, mereka adalah pembeli bona fide dengan nilai kerana telah membayar penuh harga belian sebanyak RM500,000, duti stem yang berkenaan dan yuran-yuran pendaftaranan. Maka dari itu, mereka telah memperolehi hakmilik tak boleh sangkal dibawah s 340 Kanun Tanah Kebangsaan 1965.

Diputuskan, membenarkan tuntutan plaintif:

(1) Dokumen jualbeli terdiri dari perjanjian jual beli, borang-borang pindahmilik dan borang-borang penilaian tidak mempunyai tandatangan plaintif, maka tandatangan yang ada pada dokumen tersebut yang mana bukannya tandatangan plaintif tidak boleh menjadikan dokumen tersebut sebagai suratcara yang memuaskan untuk memberi hakmilik kepada defendan. Dari itu, oleh kerana dokumen jualbeli tidak memakai nama defendan, ia tidak boleh mengikatnya (lihat perenggan 16); *State Tailor Sdn Bhd v Nallapan* [2005] 2 CLJ 167 diikut.

(2) Defendan pada imbangan kebarangkalian telah gagal untuk melepaskan beban bukti yang bahawa mereka adalah pembeli suci hati. Keterangan yang dikemukakan membuktikan bahawa keadaan-keadaan dalam mencapai jualbeli tanpa sebarang penyiasatan mengenai hakmilik atau orang yang menuntut sebagai tuanpunya-tunapunya hartanah dan penyelesaian yang tidak dijangka selepas tempoh lima bulan dari tarikh penyelesaian bertentangan dengan terma-terma nyata yang masa adalah intipati dengan jelasnya

menafikan defendan sebagai pembeli bona fides (lihat perenggan 18). Juga tiada keterangan dari defendan dan/atau peguamcara yang mewakili defendan bahawa beliau memastikan terdapat wang bagi menanggung cukai hartanah dipegang oleh peguamcara penjual. Perlu diingatkan yang peguamcara penjual mempunyai tanggungjawab kontrak untuk memegang sebahagian dari baki harga belian untuk tujuan tersebut (lihat perenggan 23). Walaupun balasan bernilai telah diberikan, mahkamah tidak boleh memutuskan bahawa defendan adalah seorang pembeli bona fide kerana tiada sebarang keterangan menyokong dikemukakan (lihat perenggan 24); *Adoma Properties Sdn Bhd v Boonsom Boonyanit* [2001] 2CLJ 133 dibeza. Tuntutan Plaintif dibenarkan.

Dokumen jualbeli terdiri dari perjanjian jual beli, borang-borang pindahmilik dan borang-borang penilaian tidak mempunyai tandatangan plaintif, maka tandatangan yang ada pada dokumen tersebut yang mana bukannya tandatangan plaintif tidak boleh menjadikan dokumen tersebut sebagai suratcara yang memuaskan untuk memberi hakmilik kepada defendan. Dari itu, oleh kerana dokumen jualbeli tidak memakai nama defendan, ia tidak boleh mengikatnya (lihat perenggan 24); *State Tailor Sdn Bhd v Nallapan* [2005] 2 CLJ 167 diikut.]

Notes

For cases on forged transfer, see 8(1) *Mallal's Digest*(4th Ed, 2006 Reissue) paras 2921–2922.

For cases on insufficient instrument, see 8(1)*Mallal's Digest*(4th Ed, 2006 Reissue) paras 2964–2969.

Cases referred to

Adorna Properties Sdn Bhd v Boonsom Boonyanit [2001] 2 CLJ 133 (folld)

State Tailor Sdn Bhd v Nallapan [2005] 2 CLJ 167 (folld)

Legislation referred to

National Land Code ss 340 (2)(b), (3)

Loh Wann Yuan (Bernard George with him) (Loh & Ranjit, Johor Bahru) for the plaintif.

Tan Hee Soon (Tan Hee Soon & Co, Johor Bahru) counsel for plaintif.

Faizah Khalid (Abdul Aziz Hamzah with him) (Zamani Ibrahim Tarmizan & Co, Kuala Lumpur) for the defendant.

Syed Ahmad Helmy J:

[1] The plaintiff's claim as appears in the statement of claim is for the following declaratory reliefs and damages:

(1) A decalration that the plaintiff is the owner of the said land known as GM 210, Lot 1183, Mukim Senai-Kulai, Daerah Kulai, Negeri Johor.

(2) A declaration that the defendant's registration as the owner of the said land is void.

(3) An order that the Registrar of Titles, Johor Bahru, expunge the name of the defendant as the owner of the said land from the registered document of title.

(4) An order that the Registrar of Titles, Johor Bahru, restores the plaintiff as the owner of the said land by making the appropriate endorsement on the registered document of title and all other relevant documents.

(5) An order that the issued document of title or any copy of title in respect of said land and in the possession of the defendant, its servants or agents be surrendered by the defendant to the Registrar of Titles for cancellation.

(6) An injunction to restrain the defendant from dealing or entering into any dealings relating to the said land.

(7) An injunction to restrain the defendant, its servants or agents from entering the said land.

(8) General and special damages.

(9) Interest on the said damages for the appropriate rate and period.

(10) Costs.

(11) Such further or other relief as this court deems just.

[2] The basis of the plaintiff's claim for declaratory reliefs is that the registration of the title into defendant's name was obtained by forgery and/or means of an insufficient and/or void instrument as the plaintiff never at any time executed any instrument of transfer in defendant's favour and that the original issue document of title had all along being in her possession and she never parted with it.

[3] The defendant in their amended defence denied the existence of forgery on the instrument of transfer and pleaded that even if forgery exists they are bona fide purchaser for value having paid the full purchase price of RM500.000 and the relevant stamp duties and registration fees and by reason thereof have acquired an indefeasible title under s 340 of the National Land Code.

[4] The agreed facts as per the statement of agreed facts in encl 39 are as follows:

(1) On 26 January 1999, the defendant executed the Sale and Purchase Agreement with a lady named Liew Yok Yin bearer of IC No 500213-01-5631 of No 128 Jalan Padi Mahsuri, Taman Senai Baru, 81400 Senai (hereinafter called 'the Vendor') for the purchase of the agricultural land measuring 7A3R27P held under GM 210 Lot 1184 Mukim Senai-Kulai, Daerah Johor Bahru (hereinafter called the 'said land') at the purchase price of RM500.000.

(2) Form 14A dated 2 November 1999 was used to effect the transfer of the said land.

(3) The said land was registered in the defendant's name by the Pentadbir Tanah Johor Bahru on 25 January 2000.

(4) The plaintiff is also known as Liew Yok Yin but her identity card number and address differs from that as stated in the sale and purchase agreement and Form 14A.

(5) The vendor appointed Messrs Loh & Renga, Johor Bahru to represent her in the sale of the said land.

(6) On 3 August 2001, the plaintiff was informed by her son, Chia Chee Chiong of clearance works on the said land and plaintiff made a police report upon being shown by the defendant a copy of the title duly registering the said land in the defendant's name.

The plaintiff in support of her claim called two witnesses, herself and her son.

[5] The plaintiff's evidence as borne out by her witness statement marked PWS-1 was to the effect that she was the registered owner of the said land ever since 29 July 1976 and the original issue document of title was kept by her in her cabinet and she did not at any time part with the possession of the title deeds nor executed any transfer of the said land with any person. She has been paying the quit rent and upon being informed by her son of the transfer into the defendant's name, she lodged a police report. On being shown the Form 14A she denied that the signature appearing therein was hers and that she did not know the lawyer by the name of Loh Song Chuan and never had any dealings with the law firm of Loh & Renga.

[6] The plaintiff son's testimony centered about how he came to know of the clearing of the land by the defendant and assisting the mother in the lodgment of the report and lodgment of caveat.

[7] The defendant in their defence preferred the testimony of two witnesses, their Managing Director, En Shahar bin Abd Karim and Mr Loh Song Chuan, the solicitor who acted for the vendor.

[8] The evidence of En Shahar as borne out by his witness statement DWS-1 was to the effect that he came to know of the said land through a clerk of the law firm of Abdul Haris Norhayati & Co by the name of Yusof sometime in 1998.

[9] He did not at any time meet the vendor of the said land and the agreement for sale & purchase and the transfer forms were prepared by the vendor's solicitors Messrs Loh Song Chuan and was forwarded through his solicitors Messrs Abdul Haris for his execution and he has paid the full purchase price, legal fees, stamp fees and registration fees and the said land was duly registered in the defendant's name.

[10] The second witness for the defendant was Mr Loh Song Chuan, the solicitor who acted for the vendor, Liew Yok Yin the bearer of identity card No 500213-01-5631 and his evidence was to the effect that he acted for the vendor and was the solicitor who prepared the sale & purchase agreement and the transfer forms & valuation form. He testified that he witnessed the execution by the vendor of the documents prepared by him. He confirmed that the vendor was a young Chinese lady in her thirties and though the last four digit of her identity card bore odd numbers namely 5631 it was not within his knowledge that the odd number reflects the identity card number of a male and not a female. He did not prepare nor file the CKHT forms nor retained any monies for real property gains tax and though he was aware of the statutory requirement to file CKHT forms he could not offer any reason why he failed to do so.

[11] The defendant's counsel after the testimony of the second witness requested for an adjournment as his third witness En. Abdul Haris the solicitor who acted for the defendant was according to him away in Australia. I refused the defendant's counsel request and directed him to close his case if he had no further witnesses. My direction was predicated by the fact that defence counsel since informing the witness on 13 May 2005 of the date of hearing did not follow up by sending reminders of the date of hearing. Furthermore no documentary evidence was produced in court in support of the statement that the witness was in Australia.

[12] I have duly considered the evidence as adduced by the respective witnesses of the plaintiff and defendant and the following are my fmdings:

(1) The plaintiff herein never executed the sale and purchase agreement, the transfer forms and the valuation forms. This aspect of my finding is not only based on the evidence of the plaintiff herself in that she never at any time executed any sale and purchase agreement, the transfer forms and the valuation forms for the disposal of the said land to the defendant or for that matter to anybody as the original title deeds was in her possession all along but the defendant in the statement of agreed facts expressly agreed that the sale and transfer documents executed by them was with the vendor who bore the same name with the plaintiff but with a different identity card number and address. Of particular significance is the evidence of SD-2, Mr Loh Song Chuan in answer to the question posed by the court that the person by the name of Liew Yok Yin for whom he prepared the sale documentation and who executed the same was not the plaintiff. The cumulative effect of the evidence aforesaid leads me to the inevitable conclusion that the sale documentation comprising of the sale and purchase agreement, the transfer forms and the valuation forms did not bear the signature of the plaintiff and hence the signature appearing thereon not being the signature of the plaintiff cannot be a sufficient instrument to convey title to the defendant. On this score, I find the plaintiff who is 90 years of age to be a witness of truth and hence it is obvious that since the sale documentation does not bear her signature it cannot bind her.

[13] In *State Tailor Sdn Bhd v Nallapan* [2005] 2 CLJ 167 the Court of Appeal opined that an instrument of transfer which bears the forged signature of the transferor being an insufficient and void instrument is a distinct vitiating factor to the doctrine of indefeasibility and falls within s 340(2)(b) of the National Land Code.

[14] In that case there was a finding of forgery that the signature appearing in Form 14A did not belong to the transferor. Hence the instrument of transfer was insufficient and void when it was presented for registration a distinct vitiating factor to the doctrine of indefeasibility of title as provided under s 340(2)(b) of the National Land Code.

[15] The facts of this case falls squarely within the principle as established in *State Tailor Sdn Bhd.*

[16] That being the case the sale documentation was a forgery that does not bear the signature of the plaintiff and hence the defeasibility provision of s 340 (2)(b) National Land Code applies.

[17] To defeat the applicability of s 340 (2)(b), the defendant has to prove that they are bona fide purchasers for value under the proviso to s 340 (3) of the National Land Code; *Adorna Properties Sdn Bhd v Boonsom Boonyanit* [2001] 2 CLJ 133. To qualify for the category of bona fide purchasers of value, aside from valuable consideration there must be absence of fraud, deceit or dishonesty and the knowledge or means of knowledge of such by the defendant at the time of entry into the transaction. The evidential burden is on the defendant that he is not only a purchaser for valuable consideration but also a purchaser in good faith.

[18] To my mind, the defendant has on a balance of probabilities fail to discharge the burden that they are purchaser in good faith. I say so because the evidence adduced establishes that the circumstances in concluding the sale without any proper investigation into the title or the person claiming to be owners of the property and the unexplained completion effected five months after the completion date in contravention of the express terms of time being the essence clearly negatives the bona fides of the defendant.

[19] The evidence of SD-1 clearly establishes that he never met the vendor personally as all dealings was done through the clerk to Messrs Abdul Haris and the solicitor therein who represented him. There is no supportive evidence adduced that there was investigation into the title to the said property and there does not appear to be any valuation done.

[20] In this connection it is also pertinent to allude to the evidence of SD-2 Loh Song Chuan the solicitors for the vendor. Upon scrutinizing his evidence, regretfully I have to say that it does not inspire confidence. In his own evidence he is a seasoned lawyer of 20 years practice but the manner in which he involved in the transaction leaves much to be desired, this is particularly telling in the manner in which he did not prepare the CKHT forms nor retained any gains tax amount when the agreement he prepared specifically provided for the provision of retaining property gains tax and more so when a scrutiny of the title presented by the vendor would reveal that she acquired the title in 1997 which is about two years back from the sale and hence would invariably attract real property gains.

[21] Again his attempt to adduce evidence that the defendant was not involved in fraud is questionable when he was never at any time representing the defendant.

[22] The conduct aforesaid leads me to conclude that the evidence of SD-2 cannot be supportive of the bona fide of the defendant.

[23] Now aside from the evidence of SD-1 that the defendant is a bona fide purchaser for value there is no other supporting evidence as regards his bona fides. There is no evidence from defendant and/or defendant's lawyer who represented the

defendant that he ensured that an amount to cover the real property gains tax payable was retained by the vendor's solicitors bearing in mind that the vendor's solicitor was contractually obligated to retain such part of the balance of the purchase price for such purpose.

[24] In the absence of any supporting evidence I cannot conclude that the defendant is a bona fide purchaser even though valuable consideration had been given.

[25] That being the case I find that the defendant is not a bona fide purchaser so as to avail themselves of the proviso to s 340(3) to defeat the vitiating factors as founded by me.

[26] In the premises, I accordingly allowed the plaintiff's claim for declaratory reliefs as prayed in items 1 to 7 of the relief prayer in the statement of claim and damages to be assessed before the deputy registrar. The plaintiff is also awarded costs to be taxed.

Plaintiff's claim allowed.

Reported by Loo Lai Mee